

2005 DRAFTING REQUEST

Bill

Received: **12/07/2004**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **mlief**

May Contact:

Addl. Drafters: **mshovers
jkuesel
jkreye**

Subject: **Econ. Development - misc.**

Extra Copies: **CTS**

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Job preservation

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mlief	kfollett					S&L
	12/17/2004	12/21/2004					
	jkuesel						
	12/19/2004						
	jkreye						
	12/20/2004						
	mshovers						
	12/20/2004						

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/1			pgreensl 12/22/2004		sbasford 12/22/2004		S&L
/2	mlief 01/25/2005	kfollett 01/26/2005	rschluet 01/27/2005		lemery 01/27/2005	sbasford 01/27/2005	S&L
/3	mlief 02/01/2005	kfollett 02/01/2005	pgreensl 02/01/2005		lemery 02/01/2005	lemery 02/01/2005	S&L
/4	mlief 03/09/2005	kfollett 03/09/2005	jfrantze 03/09/2005		lemery 03/09/2005	lemery 03/09/2005	

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/?	mlief	11/15/04 12/2/04	12/21/04 P8	12/22/04 P8+RS			

FE Sent For:

<END>

Kreye, Joseph

From: Powell, Thomas
Sent: Thursday, December 02, 2004 2:23
To: Kreye, Joseph
Subject: Berceau outsourcing bill idea

Joe,
Our outsourcing bill idea is attached.
Thanks for your help.

Tom Powell
Research Assistant to Rep. Terese Berceau

12/02/2004

Rep. Berceau's Wisconsin Job Preservation Act

Short Title. This article shall be known and may be cited as the "Wisconsin Job Preservation Act"

Definitions. As used in this article, unless the context otherwise requires:

- (1) "Company" means any Corporation, Subchapter S Corporation, Professional Corporation, Business Trust, Estate, Trust, Joint Stock Company, Joint Venture, Limited Liability Company, Partnership, Association, Unincorporated Association, Society, or any other Nongovernmental Legal Entity.
- (2) "Expatriate company" means a foreign incorporated entity that is publicly traded in the United States to which all of the following apply:
 - (a) The United States is the principal market for the public trading of the foreign incorporated entity.
 - (b) The foreign incorporated entity has no substantial business activities in the place of incorporation.
 - (c) Either clause (i) or clause (ii) applies:
 - (i) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) immediately after the acquisition, more than 50 percent of the publicly traded stock, by vote or value, of the foreign entity is held by former shareholders of the domestic corporation or by former partners of the domestic partnership or related foreign partnership. For purposes of subclause (II), any stock sold in a public offering related to the transaction or a series of transactions is disregarded.
 - (ii) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) the acquiring foreign entity is more than 50 percent owned, by vote or value, by domestic shareholders or partners.
 - (iii) For purposes of this subparagraph, indirect acquisition of property includes the acquisition of a stock share, or any portion thereof, of the owner of that property.
- (3) "Outsourcing company" means a company that has had a net loss of one

hundred or more employees in the state of Wisconsin during the prior calendar year and such loss was caused by the relocation of one hundred or more jobs from Wisconsin to a site that is located outside the United States

- (2) "Department" means the Department Workforce Development.
- (3) "Secretary" means the Secretary of the Department Workforce Development.
- (4) "Local government" means a county, city and county, city, village, town, school district, technical college district, a local improvement and service district, special district, or any other independent local entity having the authority under the general laws of this state to levy taxes or impose assessments.
- (5) "Procurement" shall have the same meaning as set forth in ???
- (6) "State agency" means a state office, administrative department, division, bureau, independent executive agency, authority, commission, institution, board, or other agency of state government, including an institution of higher education.
- (7) "Survey" means the job relocation survey that the Secretary prepares pursuant to ??? (below)
- (8) "Compelling public interest" includes, but is not limited to, ensuring the provision of essential services, ensuring the public health and safety, or an emergency as defined in ???
- (9) "Tax preference" means an exemption, exclusion, or deduction from the base of a state tax, a credit against a state tax, or a preferential state tax rate.

Outsourcing - Notice - Survey.

- (1) On or before January 31, 2006, and each January 31 thereafter, any company doing business in the state of Wisconsin that had a net loss of one hundred or more employees in the state during the prior calendar year shall notify the department of the loss.
- (2) The Secretary shall prepare a job relocation survey to be completed by a company that notifies the department pursuant to subsection (1) of this section. In addition to any other information required by the Secretary, the survey shall include the following:
 - (a) The name and principle place of business of the company;
 - (b) Identification of any procurement contracts that the company has with a state agency or a local government;
 - (c) Identification of any grants, loans, loan guarantees or bonds that the company has received from a state agency or a local government, any benefits of tax incremental financing from a state agency or a local government; or any tax preference taken;
 - (d) A statement of the number of Wisconsin employees of the

- company that lost their jobs in the preceding calendar year;
 - (e) A statement of the number of jobs that were added in Wisconsin in the preceding calendar year; and
 - (f) A statement of the number of the jobs that Wisconsin employees lost that were caused as a result of the company outsourcing the jobs to employees located outside of the United States.
- (3) A company shall complete and return the survey to the department within thirty days of receiving it. A company that fails to respond to the survey shall be subject to the penalties identified in section ??? (below) until such time that the survey is completed.
 - (4) Any person who believes that he or she lost his or her job as a result of a company outsourcing jobs to employees located outside of the United States is encouraged to report such information to the department.
 - (5) The Secretary may promulgate rules in accordance with ??? necessary to implement the provisions of this section.

Outsourcing and Expatriation- Penalties.

- (1) Notwithstanding any provision of law, any outsourcing company or any expatriate company or any of their subsidiaries shall, for a period of seven years, be ineligible to:
 - (a) Enter into a procurement contract with a state agency or a local government;
 - (b) Receive any grants, loans, loan guarantees or bonds from a state agency or a local government; or
 - (c) Receive any benefits of tax incremental financing from a state agency or a local government; or
 - (d) Receive any tax preference.
- (2) (a) The Secretary shall provide written notice of any company or subsidiary identified in subsection (1) of this section to each of the following: the Secretaries of the Departments of Administration, Commerce and Revenue, and the head of each purchasing agency, as defined in ??? each institution of higher education; any state agency that provides financial assistance to Wisconsin companies; and each local government.
 - (b) The seven-year period of ineligibility under subsection (1) of this section shall commence on the date of the written notice provided by the Secretary pursuant to paragraph (a) of this subsection (2).
- (3) The Secretary must develop and regularly update a list of outsourcing companies and expatriate companies operating in Wisconsin, and post it on the department's website.

Waivers

- common
and*
- (1) The chief executive officer of a state agency or his or her designee may waive or modify the prohibition specified in subdivision (1) (above) if the executive officer or his or her designee has made a written finding that the contract is necessary to meet a compelling public interest, and the Secretary concurs with this finding.
 - (2) The Secretary may waive or modify the prohibition specified in subdivision (1) (above) for a company or subsidiary that is a prospective vendor to a local government if the Secretary or his or her designee has made a written finding that the contract is necessary to meet a compelling public interest.
 - (3) If a waiver is granted to a company or subsidiary that is a prospective vendor pursuant to this section, the requirement to submit a declaration of compliance, as set forth in subdivision (4), does not apply to that vendor.
 - (3) On or after January 1, 2006, all state agencies and local governments shall, as a condition of the contract, require any company or subsidiary that is offered a contract to do business with the respective state agency or local government, to submit a declaration stating that the company is eligible to contract with the state agency or local government pursuant to this section.
 - (4) On or after January 1, 2006, any company or subsidiary that is seeking a grant, loan, loan guarantee, bond, tax incremental financing benefits, or tax preference, to submit to the respective state agency or local government, at the time of application for such benefits, a declaration stating that the company is eligible for such benefits pursuant to this chapter???
 - (5) A company that declares as true any material matter in a declaration described in this subdivision that ~~he~~ ^{company} or ~~she~~ knows, or has reason to believe, is false, is guilty of a misdemeanor.

Safety Clause. The Wisconsin Legislature hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Questions

1. Need for statement of intent for possible litigation?
2. Changes to Definition of Company, Local Government, etc?
3. Safety Clause needed?
4. Can local governments give a tax preference?
5. Can state offer TIF, or just local governments?
6. Do companies contract with the state or a state agency?

*only cities + villages and
to a limited extent,
towns*

7. Narrow the possibilities for granting a waiver according to compelling public interest?
8. Allowances for pollution abatement and other good tax exemptions?



State of Wisconsin
2005 - 2006 LEGISLATURE

11/62/1
LRB-H50/2

ML/JK/MS/JTK:kjf/kg

wanted Wed 12/22

2005 ASSEMBLY BILL

D. NOTE

NOT Under the bill, Commerce is required to maintain and update a list of such companies, and to ^{post} the list on its website. Agencies and local governmental units must review the list before entering into public contracts.

Regen

- 1 AN ACT to amend 16.75 (6) (e), 16.855 (18), 16.855 (21) and 16.855 (22); and to
2 create 16.753, 16.855 (23) and 560.29 of the statutes; relating to: requiring
3 companies to report net losses of jobs to the Department of Commerce, making
4 such companies ^{and certain expatriate companies} ineligible for certain tax exemptions, governmental contracts,
5 grants, and loans, ~~and~~ granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Beginning in January 2007, this bill requires a business that experienced a net loss of at least 100 employees in the preceding calendar year to notify the Department of Commerce (Commerce). The company must also complete and submit to Commerce a job relocation survey that includes, among other things, a statement of the number of those jobs that were transferred to employees located outside the United States and any contracts with or grants or loans made by the state or local government.

Under the bill, any company that has had a net loss of at least 100 employees because of jobs being transferred to employees outside of the United States is, for a period of seven years, ineligible to: 1) receive any income or franchise tax credit or property tax exemption; 2) enter into a contract with the state or a local governmental unit for the construction, remodeling, or repair of a public work or building, or for the furnishing of supplies, services, equipment, or material of any kind; and 3) receive any grants or loans from a local governmental unit.

— INSERT ANALYSIS

and any expatriate company (a company that is organized under the laws of another country that is closely related to a company or former company organized in the United States)

ASSEMBLY BILL

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.75 (6) (e) of the statutes is amended to read:

2 16.75 (6) (e) The governor or his or her designee may waive any requirement
3 of this subchapter if the governor or his or her designee finds that there exists an
4 emergency which threatens the public health, safety or welfare and the waiver is
5 necessary to meet the emergency. The governor or his or her designee shall require
6 the award of each contract under this paragraph to be made with such competition
7 as is practicable under the circumstances. The governor or his or her designee shall
8 file with the department a statement of facts constituting the emergency for each
9 waiver issued under this paragraph, and a statement of the basis for selection of each
10 contractor under the emergency procedure. This paragraph does not apply to the
11 ~~requirement~~ requirements specified in sub. (7) and s. 16.753.

12 **SECTION 2.** 16.753 of the statutes is created to read:

13 **16.753 Companies ^{and expatriate companies} experiencing job losses.** No company whose name is
14 ^{and no expatriate company, as defined in s. 560.29(1),} certified by the department of commerce under s. 560.29 (3) is eligible to enter into
15 any contract with an agency for the purchase of materials, supplies, equipment, or
16 contractual services for a period of 7 years beginning with the year in which the
17 company is required to submit a report under s. 560.29 (2).

18 **SECTION 3.** 16.855 (18) of the statutes is amended to read:

19 16.855 (18) ~~This~~ Except as provided in sub. (23), this section shall not apply
20 to restoration or reconstruction of the state capitol building, historic structures at the

ASSEMBLY BILL

1 old world Wisconsin site and at Heritage Hill state park when the department
2 determines that a waiver of this section would serve the best interests of this state.

3 SECTION 4. 16.855 (21) of the statutes is amended to read:

4 16.855 (21) This Except as provided in sub. (23), this section does not apply to
5 contracts by the department of natural resources for construction work related to
6 hazardous substance spill response under s. 292.11 or environmental repair under
7 s. 292.31.

8 SECTION 5. 16.855 (22) of the statutes is amended to read:

9 16.855 (22) The provisions of this section, except ~~sub.~~ subs. (10m) and (23), do
10 not apply to construction work for any project the estimated construction cost of
11 which does not exceed \$100,000 if the project is constructed in accordance with
12 policies and procedures prescribed by the building commission under s. 13.48 (29).
13 If the estimated construction cost of any project is at least \$30,000, and the building
14 commission elects to utilize the procedures prescribed under s. 13.48 (29) to construct
15 the project, the department shall provide adequate public notice of the project and
16 the procedures to be utilized to construct the project on a publicly accessible
17 computer site.

18 SECTION 6. 16.855 (23) of the statutes is created to read:

19 16.855 (23) No company whose name is certified by the department of
20 commerce under s. 560.29 (3) and no expatriate company, as defined in s. 560.29
21 engineering or architectural services or for construction work, as defined in s. 16.87 (1)(c),
22 (1) (a) for a period of 7 years beginning with the year in which the company is required
23 to submit a report under s. 560.29 (2).

24 SECTION 7. 560.29 of the statutes is created to read:

25 560.29 Job loss (1) DEFINITIONS. In this section:

companies experiencing job losses and expatriate companies

ASSEMBLY BILL

(a) "Agency" has the meaning given in s. 16.70 (1c).

(b) "Company" means any organization or enterprise operated for profit, including a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company, or association.

(d) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a).

(e) "Public contract" means a contract for the construction, execution, repair, remodeling, or improvement of a public work or building or for the furnishing of supplies services, equipment, or material of any kind.

(2) REPORTING. (a) On or before January 31, 2007, and annually by January 31 thereafter, any company doing business in this state that had a net loss of at least 100 employees in this state during the preceding calendar year shall notify the department of the loss.

(b) The department shall send to each company that notifies the department under par. (a) a job relocation survey that shall include, in addition, to any other information required by the department, all of the following:

1. The name and principle place of business of the company.
2. Identification of any public contracts that the company has with the state or a local governmental unit.
3. Identification of any grants or loans that the company has received from the state or a local governmental unit.
4. Identification of any tax exemptions or credits that the company claims under ch. 70 or 71.
5. A statement of the number of the company's employees in this state who lost their jobs in the preceding calendar year.
6. A statement of the number of jobs that the company added in this state in the preceding calendar year.

ASSEMBLY BILL

1 7. A statement of the number of the company's employees in this state who lost
2 their jobs because the jobs were transferred to employees located outside of the
3 United States.

4 (c) A company shall complete and return the survey to the department within
5 30 days of receiving it. A company that fails to respond to the survey is subject to the
6 penalties under sub. (4) until such time that the survey is completed and returned
7 to the department.

8 (3) CERTIFIED LIST. The department shall maintain a list of companies that are
9 subject to the penalties under sub. (4). *and shall post, and update, that list on its website. Waivers or modifications made under sub. (5) shall be noted on the list and website.*

10 (4) PENALTIES. Notwithstanding the provisions of any tax exemption under ch. *website*
11 70 or tax credit under ch. 71 for which a company would otherwise be eligible, *any had*
12 company that has had a net loss of at least 100 employees because of jobs being *2 word*
13 transferred to employees outside of the United States, as reported under sub. (2) (b) *there*
14 *and no expatriate company* shall, for a period of 7 years beginning with the year in which the company is *web*
15 required to report the loss under sub. (2), be *ineligible* to:

- 16 (a) Receive any tax exemption under ch. 70 or any tax credit under ch. 71.
17 (b) Enter into a public contract with a local governmental unit.
18 (c) Receive any grants or loans from a local governmental unit.
19 (d) Enter into a contract for the purchase of materials, supplies, equipment, or
20 contractual services with any agency, *as defined in s. 16.70(1)(a).*

21 (e) Enter into a contract for engineering or architectural services or for
22 construction work, as defined in s. 16.87 (1) (a), with any agency, *as defined in s. 16.70*

23 *440*

1
INSERT A

ASSEMBLY BILL

① ⁷
(b) RULES. The department shall promulgate rules to implement and
2 administer this section.

3 (END)

D-Note

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1162/1115
.....

before entering into a contract with

INSERT ANALYSIS

X *X* The ineligibility of a company under the bill may be waived or modified if Commerce believes that doing so is necessary to meet a compelling public interest. Finally, an agency or local governmental unit, *that plans to enter into a contract with* a company must *require the company to* submit a declaration that the company is eligible to enter the contract under the bill. A company that knowingly makes a false, material statement in a declaration is guilty of a misdemeanor.

INSERT *(A)* after sub. (4)

(5) WAIVERS; MODIFICATIONS. An agency may waive or modify a penalty in sub. (4) if the agency finds that the waiver or modification of a penalty that would otherwise be imposed is necessary to meet a compelling public interest and the department concurs. The department may waive or modify a penalty in sub. (4) that would otherwise be imposed on a company that is a prospective vendor to a local governmental unit if the department finds that the wavier or modification is necessary to meet a compelling public interest.

(6) DECLARATION; MISDEMEANOR FOR FALSE STATEMENTS. (a) *before entering into a public contract* All agencies and local governmental units shall *review the department's website list described under sub. (3)* as a condition of any contract with a company that is not granted a waiver or modification under sub. (5) *entering into a public contract* require the company to submit a declaration stating that the company is not on the list under sub. (3). *an agency or local governmental unit shall*

(b) A company that declares as true any material matter in a declaration under par. (a) that the company knows or has reason to believe is false is guilty of a misdemeanor.

D-NOTE

Date

Rep. Berceau:

this
Please review this draft very carefully - especially
560.29
560.29(3) and (6) - ensure that it meets your intent. Let
us know if you would like any changes made to the
bill
MJC, MZL

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(c) (2) "Expatriate company" means a foreign incorporated entity that is publicly traded in the United States to which all of the following apply:

(a) The United States is the principal market for the public trading of the foreign incorporated entity.

(b) The foreign incorporated entity has no substantial business activities in the place of incorporation.

(c) Either clause (i) or clause (ii) applies:

1. (i) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) immediately after the acquisition, more than 50 percent of the publicly traded stock, by vote or value, of the foreign entity is held by former shareholders of the domestic corporation or by former partners of the domestic partnership or related foreign partnership. For purposes of subclause (II), any stock sold in a public offering related to the transaction or a series of transactions is disregarded.

2. (ii) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) the acquiring foreign entity is more than 50 percent owned, by vote or value, by domestic shareholders or partners.

(iii) For purposes of this subparagraph, indirect acquisition of property includes the acquisition of a stock share, or any portion thereof, of the owner of that property.

the department determines is incorporated under the laws of a foreign country that issues shares for which the

one of the following:

incorporated in the United States

organized in the United States or a

organized in the United States

not organized in the United States

not organized in the United States

who are residents of the United States

not organized in the United States

incorporated in the United States

use twice

shares

subdivision

not

if this subdivision

a

shares

shares

if

if

if

if

if

if

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1162/1dn
MJL&MES:kjf:pg

December 21, 2004

Representative Berceau:

Please review this draft very carefully — especially s. 560.29 (3) and (6) — to ensure that it meets your intent. Let us know if you would like any changes made to the bill.

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